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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 MARCEL D. THOMPSON,

Case No. 3:17-cv-00330-MMD-WGC

9 Petitioner,

ORDER

10 v.

11 ISIDRO BACA, *et al.*,

12 Respondents.

13 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's  
14 application to proceed *in forma pauperis* (ECF No. 1), on his motion for appointment of  
15 counsel (ECF No. 1-1 at 80-86) submitted with the petition, and for initial review under  
16 Rule 4 of the Rules Governing Section 2254 Cases.

17 The Court finds that petitioner is unable to pay the filing fee and therefore will grant  
18 the pauper application.

19 Turning to petitioner's motion for appointment of counsel, petitioner Marcel  
20 Thompson currently is 76 years old. He is serving multiple consecutive sentences of life  
21 with the possibility of parole on his 1994 conviction on multiple counts of sexual assault.  
22 The corrections department's online inmate search information suggests that petitioner  
23 may be serving his final consecutive sentence with no parole eligibility prior to December  
24 2028.

25 The papers submitted by petitioner and the inmate assisting him reflect, *inter alia*,  
26 that he has dementia and short term memory loss. (ECF No. 1-1 at 83-85; ECF No. 1-2.)

27 There appears to be a substantial issue as to whether, *inter alia*, the petition is  
28 subject to dismissal as a successive petition because petitioner's prior federal petition

1 was denied on the merits in No. 3:05-cv-00468-HDM-RAM and he has not obtained  
2 authorization from the Court of Appeals to file a second or successive petition. The Court  
3 finds that appointment of counsel is in the interests of justice to assure that petitioner's  
4 ability to respond on this issue, to seek any other appropriate relief in this Court or the  
5 Court of Appeals, and/or to investigate and present his claims regarding, *inter alia*, newly-  
6 discovered evidence and actual innocence is not impaired by the asserted mental health  
7 conditions. In appointing counsel, the Court makes no implicit finding or holding with  
8 regard to the potential merit of any contention or factual claim made by petitioner in the  
9 current papers.<sup>1</sup>

10 It is therefore ordered that petitioner's application to proceed *in forma*  
11 *pauperis* (ECF No. 1) is granted. Petitioner will not be required to pay the filing fee, and  
12 the Clerk of Court will file the petition and accompanying papers.

13 It is further ordered that, in filing same, the Clerk will separately file petitioner's  
14 motion for appointment of counsel, which currently is at pages 80-86 of ECF No. 1-1; that  
15 said motion is granted; and that the Clerk will reflect the grant of the motion when  
16 docketing the motion in a manner consistent with the Clerk's current practice for such  
17 matters. The counsel appointed will represent petitioner in all federal proceedings related  
18 to this matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

19 It is further ordered that the Federal Public Defender will be provisionally appointed  
20 as counsel and will have thirty (30) days to undertake direct representation of petitioner  
21 or to indicate to the Court the office's inability to represent petitioner in these  
22 proceedings.<sup>2</sup> If the Federal Public Defender is unable to represent petitioner, the Court  
23 then will appoint alternate counsel. Following entry of a notice of appearance, the Court  
24 anticipates initiating a *sua sponte* show-cause inquiry as to whether the petition should

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26 <sup>1</sup>With regard to the successive-petition issue, the Court has not as yet definitively  
27 determined whether or not any amended or corrected judgments of conviction have been  
28 filed in the state district court.

<sup>2</sup>Counsel should review in particular petitioner's allegations regarding the federal  
public defender's prior representation of petitioner at ECF No. 1-1 at 10-12.

1 be dismissed as a successive petition. The Court anticipates setting the deadline for a  
2 counseled response at approximately ninety (90) days from entry of the formal order of  
3 appointment, to allow counsel an adequate opportunity to investigate the matter. Nothing  
4 herein forecloses petitioner from seeking other appropriate relief in this Court or the Court  
5 of Appeals and/or requesting that petitioner be allowed first to file a counseled amended  
6 petition prior to addressing the successiveness of the petition and/or other issues. In all  
7 events, any deadline established and/or any extension thereof will not signify any implied  
8 finding of a basis for tolling during the time period established. Petitioner at all times  
9 remains responsible for calculating the running of the federal limitation period and timely  
10 presenting claims. That is, by setting a deadline and/or by granting any extension thereof,  
11 the Court makes no finding or representation that the petition, any amendments thereto,  
12 and/or any claims contained therein are not subject to dismissal as untimely. See *Sossa*  
13 *v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

14 It is further ordered, so that the respondents may be electronically served with any  
15 papers filed through counsel, that the Clerk will add state attorney general Adam P. Laxalt  
16 as counsel for respondents and will make informal electronic service of this order upon  
17 respondents by directing a notice of electronic filing to him. Respondents' counsel will  
18 enter a notice of appearance within twenty-one (21) days of entry of this order, but no  
19 further response will be required from respondents until further order of the Court.

20 The Clerk further will send a copy of this order to the *pro se* petitioner, the Nevada  
21 Attorney General, the Federal Public Defender, and the CJA Coordinator for this division.

22 The Clerk additionally will provide copies of all prior filings herein to both the  
23 Attorney General and the Federal Public Defender in a manner consistent with the Clerk's  
24 current practice, such as regeneration of notices of electronic filing.

25 DATED THIS 30<sup>th</sup> day of October 2017.

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28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE